

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Desiree C. Garen,	:
Plaintiff,	:
	:
v.	: File No. 2:10 CV 5
	:
Michael J. Astrue,	:
Commissioner of Social Security,	:
Defendant.	:

ORDER

The Report and Recommendation of the United States Magistrate Judge was filed September 20, 2010. Plaintiff's objection was filed October 7, 2010 and Defendant's response to said objection was filed October 21, 2010.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b) (1); *Perez-Rubio v. Wyckoff*, 718 F.Supp. 217, 227 (S.D.N.Y. 1989). The district judge may "accept, reject, or modify, in whole or in part, the magistrate's proposed findings and recommendations." *Id.*

Garen raises two fundamental objections to the Magistrate Judge's Report and Recommendation. First, she asserts Magistrate Judge Conroy used incorrect legal standards in his Report by failing to give controlling weight to the views of the treating physicians. She also alleges the Magistrate Judge, like the ALJ, erred in his finding that the petitioner's life

activities and medical and psychological records did not support findings made by the treating physician and psychologist which said petitioner could return to past work.

Magistrate Judge Conroy defined the "treating physician rule" accurately. Treating physician's opinions are to be given controlling weight so long as that opinion is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in [the] case record." 20 C.F.R. §404.1527(d)(2); see *Green-Younger v. Barnhart*, 335 F.3d 99, 106 (2d Cir. 2003). When the treating physician's opinion is not given controlling weight and not supported by the record, such an opinion is still entitled to some weight. The Magistrate Judge applied this standard correctly.

Garen's primary objection relates to the Magistrate Judge's application of her medical records in finding that the treating physicians' opinions did not receive controlling weight and that she could return to work. Magistrate Judge Conroy engaged in a thorough review and analysis of the medical evidence relating to Garen's claims in the Report. This Court has made a careful review of those records and agrees completely with the Magistrate Judge's analysis, essentially for the reasons stated in his Report and Recommendation. The Court adopts the Magistrate Judge's Report and recommendation in full. The Court

DENIES Garen's Motion seeking an order reversing the Commissioner's decision or remanding for further proceedings and **GRANTS** the Commissioner's order affirming the same.

Dated at Burlington, in the District of Vermont, this 6th day of January, 2011.

/s/ William K. Sessions III
William K. Sessions III
U.S. District Court Judge